



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2009-0541; A-1-FRL-9928-72-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Rhode Island Low Emission Vehicle Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. The regulations adopted by Rhode Island include the California Low Emission Vehicle (LEV) II light-duty motor vehicle emission standards effective in model year 2008, the California LEV II medium-duty vehicle standards effective in model year 2009, and greenhouse gas emission standards for light-duty motor vehicles and medium-duty vehicles effective with model year 2009. The Rhode Island LEV regulation submitted also includes a zero emission vehicle (ZEV) provision. Rhode Island has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in accordance with the requirements of the Clean Air Act (CAA), as well as to reduce greenhouse gases (carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons). In addition, Rhode Island has worked to ensure that their program is identical to California's, as required by the CAA. These actions are being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2009-0541 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2009-0541," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2009-0541. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not

know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose.
- II. The California LEV Program.
- III. Relevant EPA and CAA Requirements.
 - A. Waiver Process.
 - B. State Adoption of California Standards.
- IV. Proposed Action.
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

I. Background and Purpose.

On September 5, 2008, the Rhode Island Department of Environmental Management (DEM) submitted a revision to its State Implementation Plan (SIP) consisting of Rhode Island's amended Air Pollution Control Regulation No. 37 (APCR No. 37), "Rhode Island's Low Emission Vehicle Program." Rhode Island's amended APCR No. 37, with an effective date of December 22, 2005, adopts the California LEV II program. Rhode Island first adopted California's LEV I program standards on June 6, 1996. In 1999, APCR No. 37 was amended to allow automobile manufacturers to comply with the National Low Emission Vehicle (NLEV) program in lieu of complying with the California LEV program. In 2004, Rhode Island adopted California's LEV II standards. In September 2005, California amended their LEV II standards to include standards for greenhouse gas emissions to apply to model year 2009 and later vehicles.

The December 22, 2005 amendments to Rhode Island's LEV program, rescinded both the California LEV I program and the NLEV program. In accordance with section 177 of the Clean Air Act (CAA), Rhode Island adopted the California LEV II program, including all "zero emission vehicle" program elements, commencing with 2008 model year vehicles and including the California LEV II program standards relating to greenhouse gas emissions beginning with 2009 model year vehicles.

On December 22, 2005, Rhode Island amended APCR No. 37, making minor technical corrections and clarifications: adopting California LEV II emission standards and related provisions for medium-duty vehicles commencing with the 2009 model year, adopting recently announced revisions concerning LEV II greenhouse gas emission standards and related provisions for passenger cars, light-duty trucks, and medium-duty passenger vehicles commencing with the 2009 model year in accordance with section 177 of the CAA, and

providing additional clarification and flexibility with respect to the implementation of the zero emissions vehicle (ZEV) program in Rhode Island.

II. The California LEV Program.

The California Air Resources Board (CARB) adopted the first generation of LEV regulations (LEV I) in 1990, which impacted vehicles through the 2003 model year. CARB adopted California's second generation LEV regulations (LEV II) following a November 1998 hearing. Subsequent to the adoption of the California LEV II program in February 2000, EPA adopted separate Federal standards known as the Tier 2 regulations (February 10, 2000; 65 FR 6698). In December 2000, CARB modified the California LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811).

The LEV II regulations expanded the scope of the LEV I regulations by setting strict fleet-average emission standards for light-duty, medium-duty (including sport utility vehicles), and heavy-duty vehicles. The standards began with the 2004 model year and increased in stringency through the 2010 model year and beyond. The LEV II regulations provide flexibility to auto manufacturers by allowing them to certify their vehicle models to one of several different emissions standards. The different tiers of increasingly stringent LEV II emission standards to which a manufacturer may certify a vehicle are: Low emission vehicle (LEV), ultra-low emission vehicle (ULEV), super ultra-low emission vehicle (SULEV), partial zero emission vehicle (PZEV), advanced technology partial zero emission vehicle (ATPZEV), and zero emission vehicle (ZEV).

The manufacturer must show that the overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits are progressively lower with each model year. The program also requires auto manufacturers to include a “smog index” label on each vehicle sold, which is intended to inform consumers about the amount of pollution produced by that vehicle relative to other vehicles.

In addition to meeting the LEV II requirements, large or intermediate volume manufacturers must ensure that a certain percentage of the passenger cars and lightest light-duty trucks that they market in California are ZEVs. This is referred to as the ZEV mandate. California has modified the ZEV mandate several times since it took effect. Most recently, CARB has put in place an alternative compliance program (ACP) to provide auto manufacturers with several options to meet the ZEV mandate. The ACP established ZEV credit multipliers to allow auto manufacturers to take credit for meeting the ZEV mandate by selling more PZEVs and ATPZEVs than they are otherwise required to sell. On December 28, 2006, EPA granted California’s request for a waiver of Federal preemption to enforce provisions of the ZEV regulations through model year 2011.

On October 15, 2005, California amended its LEV II program to include greenhouse gas (GHG) emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles. On December 21, 2005, California requested that EPA grant a waiver of preemption under CAA section 209(b) for its greenhouse gas emission regulations. On June 30, 2009, EPA granted CARB’s request for a waiver of CAA preemption to enforce its greenhouse gas emission standards for model year 2009 and later new motor vehicles (July 8, 2009; 74 FR 32744-32784). This decision withdrew and replaced EPA’s prior denial of the CARB’s December 21, 2005

waiver request, which was published in the Federal Register on March 6, 2008 (73 FR 12156-12169).

III. Relevant EPA and CAA Requirements.

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA shall grant a waiver of the section 209(a) prohibition to the State of California unless EPA makes specified findings, thereby allowing California to adopt its own motor vehicle emissions standards. Other states may adopt California's motor vehicle emission standards under section 177 of the CAA.

For additional information regarding California's motor vehicle emission standards and adoption by other states, please see EPA's "California Waivers and Authorizations" web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This web site also lists relevant Federal Register notices that have been issued by EPA in response to California waiver and authorization requests.

A. Waiver Process.

The CAA allows California to seek a waiver of the preemption which prohibits states from enacting emission standards for new motor vehicles. EPA must grant this waiver before California's rules may be enforced. When California files a waiver request, EPA publishes a notice for public hearing and written comment in the Federal Register. The written comment period remains open for a period of time after the public hearing. Once the comment period expires, EPA reviews the comments and the Administrator determines whether the requirements for obtaining a waiver have been met.

According to CAA section 209 – State Standards, EPA shall grant a waiver unless the Administrator finds that California:

- was arbitrary and capricious in its finding that its standards are in the aggregate at least as protective of public health and welfare as applicable Federal standards;
- does not need such standards to meet compelling and extraordinary conditions;
- or
- proposes standards and accompanying enforcement procedures that are not consistent with section 202(a) of the CAA.

The most recent EPA waiver relevant to EPA's proposed approval of Rhode Island's LEV program is "California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles" (July 8, 2009; 74 FR 32744-32784). This final rulemaking allows California to establish standards to regulate greenhouse gas emissions from new passenger cars, light-duty trucks and medium-duty vehicles. The four new greenhouse gas air contaminants added to California's existing regulations for criteria and criteria-precursor pollutants and air toxic contaminants are: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFCs).

B. State Adoption of California Standards.

Section 177 of the CAA allows other states to adopt and enforce California's standards for the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. EPA issued

guidance (CISD-07-16)¹ regarding its cross-border sales policy for California-certified vehicles.

This guidance includes a list and map of states that have adopted California standards, specific to the 2008-2010 model years. All SIP revisions submitted to EPA for approval must also meet the requirements of CAA section 110.

The provisions of section 177 of the CAA require Rhode Island to amend the Rhode Island LEV program at such time as the State of California amends its California LEV program. Rhode Island has demonstrated its commitment to maintain a Rhode Island LEV program consistent with the California LEV program through the continuous adoption of regulatory amendments to Rhode Island's APCR No. 37. For example, an earlier version of APCR No. 37, effective in the State of Rhode Island on December 7, 1999, was previously approved into the Rhode Island SIP on March 9, 2000 (65 FR 12476).

In addition, Rhode Island's September 5, 2008 SIP revision meets the anti-backsliding requirements of section 110 of the CAA. This SIP revision sets new requirements, the California LEV II standards, which are more stringent than the California LEV I standards previously approved into the SIP, and expands program coverage to model year vehicles not covered by the California LEV I standards.

EPA notes that a number of California Code of Regulations (CCR) Title 13 provisions incorporated-by-reference in Rhode Island's APCR No. 37 have been amended by California since Rhode Island adopted the December 22, 2005 amendments to APCR No. 37 currently being proposed for approved. Subsequent revisions to California regulations, and the resulting

¹ See EPA's October 29, 2007 letter to Manufactures regarding "Sales of California-certified 2008-2010 Model Year Vehicles (Cross-Border Sales Policy)," with attachments. Attachment 1 - EPA Policy on Cross-Border Sales of 2008 to 2010 Model Years California-Certified Vehicles; Attachment 2 - Questions and Answers on EPA's Cross Border Sales Policies; and Attachment 3 - Updated summary table and a set of maps reflecting the status of Section 177 states by model year. http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16888&flag=1

revisions to Rhode Island's APCR No. 37, in accordance with section 177 of the CAA, will be addressed by Rhode Island at a later date.²

IV. Proposed Action.

EPA is proposing to approve, and incorporate into the Rhode Island SIP, Rhode Island's APCR No. 37, Rhode Island's Low Emission Vehicle (LEV) program, effective in the State of Rhode Island on December 22, 2005, and submitted to EPA as a SIP revision on September 5, 2008. The Rhode Island LEV program amendments adopted by Rhode Island include: the California LEV II light-duty program beginning with model year 2008; the California LEV II medium-duty vehicle emission standards beginning with model year 2009; the California LEV II greenhouse gas emission standards for passenger cars, light-duty trucks and medium-duty passenger vehicles commencing with 2009 model year vehicles; and the California ZEV provision. EPA is proposing to approve the Rhode Island LEV program requirements into the SIP because EPA has found that the requirements are consistent with the CAA.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

V. Incorporation by Reference.

² On July 17, 2013, Rhode Island adopted revisions to Air Pollution Control Regulation No. 37 "Rhode Island's Low Emission Vehicle Program." These revisions have not yet been submitted to EPA as a SIP revision and are not part of today's action.

In this rule, the EPA is proposing to finalize regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing the incorporation by reference of Rhode Island's Air Pollution Control Regulation No. 37, Rhode Island's Low Emission Vehicle (LEV) program, effective in the State of Rhode Island on December 22, 2005. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 20, 2015.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

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